

APPEAL NO. 041436  
FILED AUGUST 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 10, 2004. The appellant/cross-respondent (claimant) appeals the hearing officer's determinations that she is not entitled to supplemental income benefits (SIBs) for the first and second quarters. The respondent/cross-appellant (carrier) appeals the hearing officer's determinations that the claimant is entitled to SIBs for the third, fourth, and fifth quarters. Neither party filed a response.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). With regard to the SIBs criterion in dispute for the first and second quarters, the hearing officer found that during the qualifying periods for the first and second quarters, the claimant did not attempt in good faith to obtain employment commensurate with her ability to work and concluded that the claimant is not entitled to SIBs for the first and second quarters. The hearing officer found in favor of the claimant on the direct result criterion for SIBs for the first and second quarters. The claimant appeals the findings of fact regarding the good faith criterion for SIBs for the first and second quarters. With regard to the SIBs criteria in dispute for the third, fourth, and fifth quarters, the hearing officer found that during the qualifying periods for the third, fourth, and fifth quarters, the claimant satisfied the good faith criterion by obtaining employment commensurate with her ability to work and that the claimant's underemployment was a direct result of the impairment from her compensable injury. The hearing officer concluded that the claimant is entitled to SIBs for the third, fourth, and fifth quarters. The carrier appeals the findings of fact regarding the good faith and direct result criteria for SIBs for the third, fourth, and fifth quarters.

There is conflicting evidence regarding the claimant's ability to work. The hearing officer determined that the claimant had some ability to work. The evidence reflects that the claimant did not work during the qualifying periods for the first and second quarters and did not look for work during every week of those qualifying periods. See Rule 130.102(e). The evidence reflects that the claimant worked portions of the qualifying periods for the third, fourth, and fifth quarters. While the claimant did contact the Texas Rehabilitation Commission, there is no evidence that she was enrolled in a vocational rehabilitation program.

Whether the claimant made a good faith effort to obtain employment commensurate with her ability to work and whether the claimant earned less than 80% of her average weekly wage as a direct result of the impairment from the compensable injury were fact questions for the hearing officer to resolve from the evidence presented

at the CCH. If a claimant has returned to work in a position relatively equal to the claimant's ability to work, the claimant does not have to show that she looked for work every week of the qualifying period. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000. In Texas Workers' Compensation Commission Appeal No. 012480, decided November 15, 2001, the Appeals Panel noted that a claimant who has established that she has returned to work in a position relatively equal to her ability to work need not establish that she worked any set portion of the qualifying period. See *also* Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000, wherein the Appeals Panel rejected the argument that a claimant must work in a relatively equal position during each week of the qualifying period in order to satisfy the good faith requirement of Rule 130.102(d)(1). With regard to the claimant's ability to work, the carrier's argument fails to take into consideration a work status report from the treating doctor issued immediately preceding the qualifying period for the first quarter, which limits the number of hours the claimant may work each day. We also note that Appeal No. 000321, *supra*, held that a claimant only has to satisfy one of the methods for demonstrating good faith set forth in Rule 130.102(d). In the instant case, the hearing officer's determinations regarding the good faith criterion for SIBs during the qualifying periods for the third, fourth, and fifth quarters are based on Rule 130.102(d)(1), the return-to-work provision, and not on the no-ability-to-work provision of Rule 130.102(d)(4). Thus, the carrier's argument that the claimant failed to show she had no ability to work during portions of the qualifying periods for the third, fourth, and fifth quarters is not grounds for reversal.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's determinations on the quarters in issue are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge